

REMARKS

Following entry of the above amendment, claims 1-14 are pending. Claims 7-12 are withdrawn as being drawn to non-elected subject matter. Applicants amend claim 4 and add new claims 13-14. Support for the amendment and new claims is found in the specification as originally filed. See, for example, claim 4 as originally filed.

1. Response to Restriction Requirement

The Office Action states that the instant application contains inventions that are not so linked as to form a single general inventive concept under PCT Rule 13.1, and requires Applicants to make an election from the following groups:

Group I, claim(s) 1-6 drawn to a process of producing fermentation production [*sic*] by adding a carbohydrate source generating enzyme and a microorganism to mash ; and

Group II, claim(s) 7-12 drawn to a method of making a fermentation production [*sic*] by milling and liquefying whole grain adding a microorganism and an enzyme.

Applicants elect, with traverse, Group I, claims 1-6 drawn to a process of producing a fermentation product comprising adding a carbohydrate source generating enzyme and a microorganism to liquefied mash. Applicants submit that the subject matter of newly added claims 13 and 14 also falls within the scope of elected Group I. Therefore, Applicants elect group I, claims 1-6 and 13-14, and respectfully request examination of the same.

The Office Action states that the inventions in the instant application do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT rule 13.2, they lack the same or corresponding special technical feature. Applicants respectfully disagree.

The Office Action states that the inventions of groups I and II do not match a permitted category as PCT Rule 13.2 does not provide for multiple methods or products in one category. Applicants respectfully submit that PCT Rule 13.2 does not require "permitted categories" or prohibit multiple methods or products in a single application. Rather, PCT Rule 13.2 provides that when a group of inventions is claimed in a single application, unity of invention required by PCT Rule 13.1 "shall be fulfilled only when there is a technical relationship among those inventions involving one or more of the same or corresponding special technical features. The expression 'special technical features' shall mean those technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art." Further, MPEP 1893.03(d) provides, in pertinent part, that a group of inventions is considered linked to form a single general inventive concept where there is a technical

relationship among the inventions that involves at least one common or corresponding special technical feature.

MPEP 1893.03(d) also provides that when making a lack of unity of invention requirement, the examiner must (1) list the different groups of claims and (2) explain why each group lacks unity with each other group (i.e., why there is no single general inventive concept) specifically describing the unique special technical feature in each group.

Applicants respectfully submit that the inventions of groups I and II are linked to form a single general inventive concept by having at least one common special technical feature. However, the Examiner has improperly characterized the "special technical feature" of the inventions of groups I and II in the instant Office Action. The Examiner states that the "addition of carbohydrate degrading enzymes to microorganisms in fermentation processes is old and well known in the art" citing Yoshizumi et al., US Patent No. 4,514,496, Examples, or Takeda, US Patent No. US 4,358,462, Examples, or Lantero et al., US Patent No. 5,231,017, Examples. Thus, the Examiner is stating that the special technical feature of the instant inventions is the addition of carbohydrate degrading enzymes to microorganisms in fermentation processes. This is incorrect. Rather, the special technical feature shared by the instant inventions of groups I and II is a method for carrying out a fermentation process, wherein the method comprises "adding said carbohydrate generating enzyme after the lag phase of the fermenting organism." This special technical feature is shared amongst the inventions of groups I and II, and it defines a contribution which each of the claimed inventions, considered as a whole, makes over the prior art. Therefore, the inventions of groups I and II do comply with the requirement of PCT Rule 13.1 for unity of invention and Applicants respectfully request reconsideration and withdrawal of the election/restriction requirement, and examination and allowance of claims 1-14.

Applicants believe the present claims are in condition for allowance and such action is respectfully requested. Applicants believe that no other fees are due in connection with the filing of this paper other than those specifically authorized herewith. However, should any other fees be deemed necessary to effect the timely filing of this paper, the Commissioner is hereby authorized to charge such fees to Deposit Account No. 50-1701.

The Examiner is hereby invited to contact the undersigned by telephone if there are any questions concerning this amendment or application.

Respectfully submitted,

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